

SPECIAL SCHOOL DISTRICT OF ST. LOUIS COUNTY,)
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Petitioner,)
)
vs.)
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)
)
and)
)
Respondents.)

BEFORE THE THREE MEMBER DUE-PROCESS HEARING PANEL
PURSUANT TO RSMO. *Sect.* 162.961

SPECIAL SCHOOL DISTRICT OF ST. LOUIS COUNTY,)	
)	
Petitioner,)	
)	
vs.)	
)	
)	
)	
and)	
)	
Respondents.)	

ISSUE AND PURPOSE OF THE HEARING

The issue is as follows:

Whether the Special School District of St. Louis County has reason to suspect that
is a student with a disability?

TIME-LINE INFORMATION

The request for hearing was received by the Department of Education on February 23, 2001. The hearing was held and concluded on April 2, 2001. At the close of the hearing, the Special School District, through its attorney, Mr. Thomeczek, requested that the time-line for the issuance of the Panel's opinion be extended until April 30, 2001. This request was granted.

FINDINGS OF FACT

1. The Chairperson advised the mother, Ms. , by telephone and letter dated March 13, 2001 that this hearing would be held Monday, April 2, 2001, beginning at 9 a.m. at the following location: Webster Groves School Board Room, 400 East Lockwood, Webster Groves, MO 63119.

2. During the Chairperson's telephone conversation with Ms. , she advised that she would not attend the hearing, and in fact neither Ms. nor appeared at the hearing on April 2. The hearing commenced shortly after 9 a.m. The School District's evidence included the School District's exhibits 1 through 42 which were offered and received in evidence, affidavits (to which no objection was interposed) and the testimony of Jennifer Swank, ' second grade teacher, who taught from November, 2000 until the hearing, James Griffard, a social worker for the Webster Groves District who worked with and John Robert Rowe, a kindergarten teacher at Edgar Road Elementary School in the Webster Groves School District, who taught in the spring and fall of 2000.

3. Since September, 1998 has received educational instruction in the Webster Groves School District, a public school district located in St. Louis County.

4. The Special School District of St. Louis County educates students who are in need of special educational and related services in the public school districts of St. Louis County, including the Webster Groves School District and receives referrals from said school districts, including the Webster Groves School District .

5. Jennifer Swank, ' current teacher, has taught second grade at Edgar Road

Elementary School for approximately eighteen years. She has previous teaching experience, including experience as a teacher in a Learning Disabilities Resource Room for two years in the Fox C-6 School District, located in Jefferson County, Missouri. Ms. Swank has a Bachelor of Science in Education of the Exceptional Child from Southeast Missouri State University, an MAT from Webster University in Communications and about forty-eight graduate hours.

6. While [redacted] was a student in Ms. Swank's class there was an aide working with him full time, one-on-one. This aide kept a notebook with respect to [redacted]'s behavior.

7. [redacted] engaged in inappropriate behavior on a daily basis. These behaviors were recorded in the aide's log. Some of the inappropriate behaviors included the following:

He did not stay on tasks; he could not focus on what the class was doing; he distracted other children and sometimes the whole class; he acted out including talking, laughing, playing, falling out of the chair, throwing his pencil, wadding up his paper; he did not stay seated for any length of time.

These behaviors were continuous in spite of the fact that [redacted] had a one-on-one aide sitting in close proximity to him and trying to keep his behaviors under control.

8. In addition to the foregoing behaviors, [redacted] engaged in aggressive behaviors including throwing another student to the floor, tripping, kicking the aide, shoving and pulling on her, calling the aide a "bitch." Ms. Swank testified that she suspects that [redacted] may be a student with an educational disability. She further testified that [redacted] is one of the most behaviorally involved students that she has taught in her twenty-two years of teaching.

9. James Griffard has been a social worker for the Webster Groves School District for the past three years. He serves as the LEA in processing referrals, works with the parents and collaborates with teachers in helping students who are having behavioral or emotional issues that disrupt their performance or the performance of others. Mr. Griffard has an undergraduate degree in Business Administration, a Master's Degree in Social Work, and a Master's Degree in Divinity. For eleven years prior to working in the Webster Groves School District he served in a special education co-op as a social worker. Mr. Griffard met and worked with in his first grade during the school year 1999-2000 at the Avery Elementary School and then at the Edgar Road Elementary School. Mr. Griffard worked with a team of teachers called the "Care Team" which is a group of specialists and educators who gave ' classroom teacher suggestions for a program of interventions in trying to extinguish some of the disruptive and defiant behaviors exhibited by . These interventions proved unsuccessful.

10. Mr. Griffard observed in the classroom both in the Avery and the Edgar Road Elementary Schools. was transferred from Avery to Edgar Road because of the nature and frequency of his behaviors and due to the fact that the staff at Avery was having difficulty in building a rapport with ' mother. was not successful in doing his academic work during the 1999-2000 school year, and his stress level was above normal.

11. On numerous occasions the School District expressed concerns to Ms. that might have an underlying learning disability or that he might have a behavior problem and requested that she give permission for a psychological evaluation or a mental health evaluation. Ms. refused to give consent for such an evaluation.

The School District sent Ms. a "Notice of Intent to Evaluate and Consent Form"

dated May 31, 2000 which contained a signature line for the parent's signature authorizing the evaluation. This was not signed. In November and December of 2000 and in January of 2001 the School District again requested Ms. to give permission to evaluate, but she refused.

12. Mr. Griffard testified that based upon his experience as a social worker in school districts both in Illinois and Missouri and due to the nature and the degree of behaviors that has exhibited, it is his opinion that the School District has reason to suspect that has an educational disability.

13. John Rowe, a kindergarten teacher at Edgar Road Elementary School for eighteen years testified. Prior to that he was an early childhood specialist for eight years, teaching three and four year olds who were mild to moderately handicapped in the Webster Groves School District. He has a Bachelor's Degree in Psychology and a Master's in Arts and Teaching and Early Childhood Special Education. He is certified in elementary LD, ED, EMR, and BD and early childhood education.

14. was in Mr. Rowe's classroom last spring and in the fall of 2000., until November. was placed in Mr. Rowe's kindergarten class because was having difficulty transitioning in Edgar Road Elementary and into the first grade of that building.

15. showed signs that he could read at the level expected of him, but he wasn't as strong in math skills. He could count to one hundred, and he was beginning to understand skip counting, counting by two's and five's, but he could not do simple addition.

16. In the spring of 2000 appeared to enjoy being in Mr. Rowe's class; however, in the fall of 2000 he began to refuse to do work that was more challenging. He showed tendencies of wanting everything to be exactly perfect and would get very upset if his writing

or drawing was not that which he thought it should be. His chronological writing and his fine motor skills were good.

17. exhibited unacceptable behaviors which included trying to get out of work constantly, refusing to work, crawling under a table or trying to go to the bathroom in order to escape the work. Many times he would just get up from his desk and walk around the room.

18. Mr. Rowe initiated a “Care Team” because he felt that he, himself, wasn’t able to reach’ educational needs, and his behaviors were extremely disruptive to the classroom. The disruptive behaviors continued even though there were three adults in the classroom working with him, including an aide who was with him one-on-one. At times education in the classroom came to a halt because attention had to be given to.

19. Mr. Rowe stated that in his opinion there was reason to believe that may have an educational disability. He testified that there were inconsistencies in his performance.

There were things that he knew could do and could grasp, but if you took it to a level above, there would be difficulty. His behaviors were interfering with his wanting to take on new tasks and learn new things.

CONCLUSIONS OF LAW

1. The Individuals with Disabilities Education Act (hereafter “IDEA”) requires that the State Educational Agency have in effect policies and procedures to ensure that children who are suspected of being a child with a disability as that as described in the Act be identified, located and evaluated. 20 U.S.C. Section 1412 (a) (3) (A) and (B), 34 CFR Section 300.125.

2. IDEA requires that the State Educational Agency must provide procedural safeguards which includes informed parental consent before conducting an initial evaluation to determine whether or not a student is in need of, and should be given, special education and related services. 20 U.S.C. 1415 (a) and (b), 34 CFR Sections 300.500 and 300.505.

3. The Webster Groves School District and the Special School District of St. Louis County have reason to suspect that has an educational disability and is in need of evaluation.

4. The Panel finds and concludes that the School District on more than one occasion sought the consent of ' mother, Ms. , to evaluate , but she has refused and continues to refuse to give such consent.

5. The Panel concludes that the School District has satisfied the procedural safeguards of IDEA as required in 20 U.S.C. 1412 (a), 34 CFR Section 300.126.

6. Consequently, the Panel hereby **ORDERS** that the Special School District of St. Louis County is authorized to conduct an educational evaluation of pursuant to the requirements of IDEA and the federal regulations promulgated pursuant thereto. 20 U.S.C. Section 1414 (a) (1) (A); 34 CFR Section 300.125.

APPEAL PROCEDURE

PLEASE TAKE NOTICE THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONSTITUTE THE FINAL DECISION OF THE DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION IN THIS MATTER.

PLEASE TAKE FURTHER NOTICE that you have a right to request a review of

this decision pursuant to the Missouri Administrative Procedure Act, Section 536.010 et seq RSMo., specifically, Section 536.110 RSMo. which provides in pertinent part as follows:

- “1. Proceedings for review may be instituted by filing a petition in the Court of the county of proper venue within 30 days after the mailing or delivery of the notice of the agency’s final decision . . .
3. The venue of such cases shall, at the option of the plaintiff, be in the Circuit Court of Cole County or in the county of the plaintiff or of one of the plaintiff’s residence . . .”

PLEASE TAKE FURTHER NOTICE that, alternatively, your appeal may be taken to the United States District Court for the Eastern District of Missouri in lieu of appeal to the state courts. 20 U.S.C. Section 1415.

Dated this _____ day of April, 2001.

CARROLL JENNINGS, Panel Member

KAREN KARNS, Panel Member

GEORGE J. BUDE, Chairperson